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To the ancient inhabitants of the Euphrates and Tigris valley it was a matter of more than temporal interest to possess offspring. A Babylonian's very existence in the other world, according to belief, depended upon children, especially sons, who should assure the deceased his funerary offerings, the neglect of which was considered a calamity of the gravest import.

This sentiment was a strong factor in acquiring large families, even more so in Babylonia than in ancient Greece, where, according to Luc. de Luct. 9, the prayer was for children in order to give assurance to the departed spirit that he might not be "an unfed and hungry citizen of the other world, for want of friends or relatives on earth." He who is neglected in the grave, is described, in the dialogue between Gilgamesh and his departed friend Enkidu's spirit, as follows: "Whose spirit has no one to care for, have you seen such?"—"Yes, I saw; what is left in the pot, what is thrown into the street, he is obliged to eat." Second only to this religious sentiment was an economic factor which induced especially poorer households to raise a number of children, for each additional child meant in time a new source of income.

The desire for sons is well illustrated in the numerous names given to individuals where this sentiment still re-echoes, for instance, Abi-zer-utir, "My father has reestablished offspring," Adad-akh-usur, "O Adad, protect the

brother," Akhi-bashtu, "My brother is abundance," Akhi-duri, "My brother is a stronghold," Akhi-lamur, "May I see my brother," Akh-lurshi, "May I get a brother," Nabu-akh-iddin, "Nabu has given a brother," and innumerable other names of similar content.

The tendency was thus toward large families. Even at a time when Babylonia had become a thickly settled country, where it would have been wise, under the circumstance, to restrict childbirth, the desire for having many children within a household never lost its force.

In view of these considerations one would expect the Babylonian family to have been generally large. But this was not the case. The birth rate, indeed, was high, but the rate of infant mortality was equally great to counteract the danger of overpopulation. This accounts for the fact that the Babylonian never was forced to migrate, and that the country was able to absorb large numbers of foreign elements without much apparent economic and social disturbance.

The conditions in Babylonia, in other words, were not very different from those which prevailed in Egypt, where infant mortality was also high and where, in the various necropolises, great numbers of infant corpses have been found.

The average number of children in one household appears to have been no more than three or four. In the family relief of the Sumerian ruler Ur-Nina (c. 3150 B.C.) appear four sons and one daughter. Very large numbers of children in the same family are rare, but are sometimes mentioned, as in the case of Rameses II who had at least 170 children, or of an official named Baba, of the Middle Empire, who seems to have had 60.

Apart from the high rate of infant mortality, a certain barbaric practice, shared by Babylonia with the entire ancient world, reduced the number of undesirable offspring. I refer here to the practice of the abandonment of children. The offspring of certain classes of priestesses and votaries who were prohibited from having descendants, or of parents too poor to raise them, or even of well-to-do parents whose

sickly and weak children might become a burden to the family, were thrown into the street, or carried into the desert, or left on the mountains to become prey to dogs or wild animals, or to die of hunger and thirst, or exposure.

The idea underlying such practices was that power over persons was identical with power over things. Children, like slaves, were considered property to be disposed of at will. They could be killed, mutilated, or ejected from the house, just as things owned could be broken, destroyed, or abandoned. The acquiescence of the law in regard to infant abandonment, however, was merely a concession to ancient customs which had granted the father a greater share of power. At a later time the law permitted the custom only in the case of newborn babes. The law code of Hammurabi restricted the parental power and at the same time safeguarded and even augmented to a certain extent the rights of children, especially in regard to a son's ejection from the paternal home. This matter could be decided only in court and after it had been shown that the son had committed a crime sufficiently grave to permit the father to cut him off from filial relationship. Here, however, the law again shows its leaning toward the protection of such a child by stipulating that a first offense should be condoned, and only after a second offense of equal nature or gravity could the father act against him. It is noteworthy, however, that the law is silent as to the power of a paterfamilias in the case of girls, a silence which may be explained as favoring a freer hand in such instance.

The extensive practice of abandoning children partially accounts for the numerous cases of adoption. Abandoned foundlings contributed a large share to *adoptio inter vivos* cases, in addition to the cases where children were directly given over to the adopter by the parents, or through a third party in the case of orphans. Cases of adoption, in fact, were so numerous in Babylonia that one is forced to wonder why recourse to adoption was taken where other lawful means of accomplishing the desired ends were available, and whether, if it had not been for the thought that abandoned children

might readily find new homes, abandonment might have occurred less often. Paragraphs 144, 145, 146, and 148 of the legal code took sufficient care of cases where a wife bore her husband no children. The husband was allowed to take a maid servant whom his wife might select, and if the maid servant also remained childless, a concubine. Adopted children, moreover, were taken into the household where there were already sons and daughters.

The motives for adoption, of course, varied; in one instance, common humanity may have prompted one to take an abandoned child into the home and raise it as one's own; in another, less idealistic reasons may have been at work. A healthy child might be desirable because of its future earning power, or because the adopter had no hope of children, or because, as in the case of elderly parents, where children have married and gone from home, a child was needed to look after them.

Babylonian adoption was a purely private matter, effected and legally safeguarded by a document duly witnessed. Legally no special qualification, such as that the adopter be a paterfamilias, or that the adoptee be younger than the adopter, was necessary. Eunuchs, unmarried men, as well as priestesses and votaries prohibited from marrying, were permitted to create for themselves a posterity by adoption, the procedure differing in no way from the adoption by a paterfamilias. As the development of the legal phraseology in the documents would show, it was customary to give the adopted child away through a third party—through the natural parents in case they were still alive. How the procedure was in the case the child was a waif, is not known. In cases of adult adoptions, he or she gave themselves "with their consent."

The adopter incurred considerable expense, for apart from the notary's fee, which after all was negligible, he had to give the child, if an infant, into the care of a wet nurse. And, as in Egypt so in Babylonia, nursing at the breast extended over a number of years, generally two to three. The Koran still prescribes that a mother should give the breast

to her children for a period of two years, but it permits, under certain circumstances, an earlier weaning. It not infrequently happened that the fee due the wet nurse was too heavy to be borne, so that the child was lost to the parents on account of debt. In one document (VS VII, 10. 11) parents were unable to give the fee, extending over three years, to the nurse; thereupon the mother said to the nurse, a hierodule, "Take the child. Let it be your child," and in addition to the remission of the wages due, the adopting nurse gave to the parents of the child an amount of money totaling three shekels of silver. Frequently the adopter gave to the parents of the adopted child a sum of money called "the nursing money," that is, money which should compensate for the expense so far incurred by the natural parents for raising the child. This practice comes very near to sale of children, a custom which was not yet quite dead even in the time of Hammurabi.

The law considered adoption as something firm and enduring, an obligation by contract on the part of the adopter as well as of the adoptee, which could not be dissolved according to one's pleasure. The documentary formula read: "*A*, the son (daughter) of *B* (and *C*, his wife), *D*, (and *E*, his wife) has (have) adopted as child, forever and always." Where the latter phrase is omitted, it is at least implied. Paragraph 191 of the Code states: "If a man, who has adopted a young child and raised him, marries and afterwards acquires children, and resolves to cut off the adopted, that son shall not go his way. The father, who reared him, shall give him of his possessions one-third the portion of a son and he shall go. However, he shall not give to him of field, garden, or house." This law is not quite clear, for theoretically there is only one good cause, on the part of the adopter, for dissolving the bonds of adoption. This cause is not clearly stated in the Code, probably in order to concede somewhat to the older idea which granted a father unrestricted right and power over members of his own household, and in accordance therewith the Sumerian law gave free power to the adopter to cast off an adopted child. The

modified law reads: "If a man [and wife] adopt a young child, and when they have adopted him, he sin against his [adopted] father and mother, that adopted child shall return to his [natural] father's house." The adoption contracts make it clear that such sin against the adopters consisted in the adopted child's denial of the adopter's fatherhood. If the child should say to his [adopted] father: "You are not my father," or to his mother "You are not my mother," the child was to be returned to his natural parents. Here the law of Hammurabi has mitigated considerably the harshness of the older Sumerian law which prescribed, in this case, the enslavement of the adopted child. Since in the stipulation of the previously mentioned law no denial of fatherhood is present, it must imply mutual agreement for dissolving the existing bonds, but the adopted father had to give to the child a third of a son's portion in movable possessions.

Dissolution of the bonds of adoption on the part of the child was permissible when the adopter grossly neglected the child (§190). No special punishment to be sustained by the father is mentioned in the Code in such a case, which might be employed by the adopter as a subterfuge for cheap riddance of an adopted child. On the other hand, however, the law acknowledged at least a right of the adopted child to dissolve the relationship under a certain condition. In the earlier Sumerian law no such right under any condition was allowed him. An adopted son, in Sumerian times, who desired dissolution of the filial bonds was branded as a slave, put into fetters, and sold for money. In the time of Hammurabi, even in the case where an adopted child gave notice of intent of such dissolution without due cause, no such severe punishment was meted out to him by law, with the exception of the adopted son of a certain class of palace officials, or of a devotee. Should such a child seek dissolution, by saying "you are not my father," or "you are not my mother," his tongue was cut out. The same old severity is preserved in the Code if such a child identified the house of his natural father or mother, and, hating his adopted parents, returned to his original home. The punishment incurred consisted in

the loss of his eye. Indications, however, are not wanting to show that much of the severity of the old Sumerian law had already been ameliorated prior to Hammurabi, and in practice such severe and cruel punishments as were retained in the Hammurabi Code were not always strictly followed.

The Code devotes two paragraphs to a case, which, though incorporated within the adoption laws, is strictly speaking no adoption, as already a distinction in the phraseology is made. For while adoption is called "*ana marutim liqu*," paragraph 188 speaks only of "*ana tarbitim liqu*," that is, the bringing up of a child. The paragraph states: "If an artisan take a child in order to raise him and teach him his handicraft, one may not bring claim for him. If he do not teach him his handicraft, that reared child may return to his father's house." The custom of giving away a child in apprenticeship apparently brought about similar conditions to those involved in adoption, and therefore this case was incorporated in the adoption laws. It involved a limited adoption, extending over certain years, during which time the master exercised complete power over the person, who became a member of his family, entering upon an equal status with his children in all but inheritance claims. This relationship could be dissolved only through negligence on the part of the artisan.

The adoption contracts, however, are not restricted to the few instances enumerated in the Code under which dissolution was permissible. There are contracts with proviso for optional separation. Either the adopter or the adoptee reserved for himself the right to annul the existing bonds, whereby the son left the house, or with additional exile of domicile. In other instances the right of separation is by contract limited to the adopter with or without promise of a son's portion for the dismissed.

It frequently occurred that an owner and his wife desired to adopt one of their slaves. In this instance manumission preceded the act of adoption. The release of a slave for the purpose of adoption was called "cleansing," which consisted in a sacred ceremony, annulling symbolically the slave mark

branded on the forehead. This ceremony was a certain kind of water consecration, in which the face of the freedman was turned toward the East. As adopted child, the freed slave entered into the full rights and duties of sonship, and in case of filial insurrection suffered the punishment of a free person. In some instances where a female slave had thus been freed and adopted, the act of cleansing was called "her-face-has-been-made-beautiful," reminiscent of the old Nordic word *skira*, "to baptize," which originally means both "to cleanse" and "to make beautiful." Christian baptism, in fact, is based upon a similar idea, for it is not conceived of as a mere act of initiation into the Christian community, but an act in which God takes the baptized into a relation of sonship—the baptized become adopted children of God. Possible connections between the Babylonian sacred act of "cleansing" and the institution of Christian baptism need further study.

In a country where slavery was hardly ever conceived of as a disgrace, but merely as a misfortune, it is natural that adoption of enfranchised slaves was rather common. In most instances of this kind, however, there is found in the documents the stipulation that the adoptee assume the obligation of providing for the sustenance of his adopters as long as they lived. Once, where a Shamash priestess enfranchised and adopted a slave girl and her suckling baby, it is especially emphasized that only after the death of the mother does the adopted daughter become her own mistress with free disposition over herself. Whether the *potestas dominica* automatically ceased over children born to a slave prior to his or her enfranchisement, or could be retained or not according to the wishes of the slaveholder, is nowhere indicated. In the case mentioned above, the baby of the slave girl had actually become free apparently without any cleansing ceremony. Perhaps the slave mark had not yet been placed upon its forehead. Temple women, prohibited from marrying, availed themselves especially of this mode of adoption in order to assure for themselves a comfortable old age.

Union of a slave and slave girl was not merely considered in Babylonia a *de facto* union (*contubernium*), but as a true and legally valid marriage. The offspring thereof accrued to the owner's estate. The circumstances differed only slightly in case the *ancilla*, as inferior wife, bore children to her master. Though the mother might experience easier conditions within the household, especially in so far as her sale was not allowed, her children needed special adoption to raise them to equal status with the children of the first wife. If the father adopted them, by saying "my children," and reckoned them with the children of his wife, the children of the wife and the children of the *ancilla*, according to §170 of the Code, after the death of their father, were to divide the goods of the father's house equally, though the children of the wife had the right of choice at the division. In case the father did not adopt them, the only easement both mother and children received, at the death of the father, was their franchise.

There remains the consideration of a legal condition which prohibited the establishment of a beneficiary outside of the family in the case of the existence of natural children, or at least of sons. According to Sumerian law the first born son received the chief portion of the inheritance. In case of adoption, where a natural born son succeeded the adopted, the force of the old law was largely maintained later on in Southern Babylonia, and the rights of the first born over those of the adopted were preserved. In the North, however, the law could be interpreted to favor the adopted, even though the adopter should later on have natural children.

Apart from the recourse to *adoptio inter vivos*, the danger of a vacant inheritance could be avoided by *adoptio in hereditatem*, adoption in case of death. In all such instances, the adoptee at the death of the adopter became universal successor without testament, from which latter the *adoptio in hereditatem* was distinguished in so far as it did not rest on a unilateral, freely revocable disposition.

The latter mode of adoption, called *ana aplutim liqu*, might take two forms of execution. The adoptee might enter upon his new status only at the death of the adopter, or he might, according to contract, immediately take over the estate as administrator, the adopter remaining in full possession of his estate during his life time. Lawsuits grew out of this practice quite frequently, especially when the adopter was a woman whose right of free disposition of her estate was contested by her relatives. The bond could be annulled in court only.

From this sketch it will be seen that the Babylonian law of adoption had been fully developed at about 2,000 B.C. But its intricate system often produced strange phenomena. So in the case of a certain Bel-qasir, who lived in Neo-Babylonian time. Being himself an adopted son, he asked his father Nadin to set up for him in writing a document of adoption whereby Bel-qasir adopt the son of his wife Zunna by her former marriage with Niqudu, because his own marriage had remained childless. The form desired was that of *adoptio in hereditatem*, with right of the adopted of administration of the grandfather's (Nadin's) estate. Old Nadin, however, objected to this and he "tied the hands" of his adopted son by drawing up an instrument wherein he set down that in case of his death, should there be born to Bel-qasir a son, this son should become heir to Nadin's estate. But if Bel-qasir remain without natural offspring, the latter was obliged to adopt his brother and co-heir, and no one else, in order to become universal successor.